

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

BRENDA BOWIE, Administratrix
of the Estate of Randall Williams,
Deceased

PLAINTIFF

V.

CIVIL ACTION NO. 2:01CV250-B-B

SEARIVER MARITIME, INC. and
JANTRAN, INC.

DEFENDANTS

ORDER

This cause comes before the court on the plaintiff's motion to remand. On November 26, 2001, this court granted summary judgment in favor of Jantran, Inc. [Jantran] in a limitation proceeding, Cause No. 2:98CV36B-B, and lifted the stay of the state court proceeding in order to allow the plaintiff to proceed with her cause against SeaRiver Maritime, Inc. [SeaRiver] in state court. Title 28 U.S.C. § 1446(b) provides in pertinent part:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant . . . of a copy of an amended pleading, motion order or other paper from which it may first be ascertained that the case is one which is or has become removable.

Since the aforementioned order dismissed Jantran, the nondiverse defendant, and the plaintiff's claim against SeaRiver exceeds \$75,000, SeaRiver filed a notice of removal based upon diversity of citizenship jurisdiction. Thereafter, the plaintiff filed the instant motion, pursuant to 28 U.S.C. § 1447(c).

When a nondiverse defendant is dismissed, and the remaining parties satisfy the requirements of diversity of citizenship jurisdiction, the so-called "voluntary-involuntary" rule provides that removability depends on the character of the dismissal. *Grady v. Crompton*, 55 F. Supp.2d 593, 596 (S.D.Miss. 1999). If the plaintiff initiates the dismissal, it is deemed

"voluntary"; if the defendant or the court initiates the dismissal, it is "involuntary." *Id.* Only if the dismissal is voluntary may the action be removed. *Id.* (citing *Pullman Co. v. Jenkins*, 305 U.S. 59, 83 L.Ed. 334 (1939)). In *Weems v. Louis Dreyfus Corp.*, 380 F.2d 545 (5th Cir. 1967), the Fifth Circuit reaffirmed the "voluntary-involuntary" rule, explaining that it has "merit in that it prevents removal of those cases in which the issue of the resident defendant's dismissal has not been fully determined in the state courts."

SeaRiver contends that the "voluntary-involuntary" rule, as described in *Weems*, applies only when the involuntary dismissal occurs in state court and has no relevance in the instant case where the non-diverse defendant was dismissed while the case was pending in state court. The court rejects SeaRiver's argument. While the court in *Weems* set forth a rationale underlying the survivability of the rule following the amendments to 28 U.S.C. § 1446(b), it did not limit the scope of the rule to the procedural circumstance attendant to that rationale. Based on the court's research, application of the rule to prevent removal appears to be contingent on the involuntary character of the dismissal. SeaRiver does not cite a single case supporting its proposition that the rule does not encompass an involuntary dismissal by a federal court, and the court is unaware of such a case. Therefore, the court is of the opinion that the "voluntary-involuntary" rule applies to the instant cause and precludes SeaRiver's removal to this court. Accordingly, the plaintiff's motion to remand is **GRANTED**.

This, the _____ day of March, 2002.

NEAL B. BIGGERS, JR.
SENIOR U.S. DISTRICT JUDGE